OFFICE SUPREME COURT U.S.
FILED
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JAMES H. McKENNEY, Clerk.

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1880.

No. 215.

MECHANICS' & TRADERS' INSURANCE CO.

versus

BASIL G. KIGER, ET ALS.

Writ of Error to the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR SAMUEL BOYD & CO., DEFENDANTS IN ERROR.

JOSEPH P. HORNOR,
W. S. BENEDICT,
Of Counsel for Boyd & Co., Defendants in Error.

NEW ORLEANS, 4 January, 1881.

HINTON & MASON PRINT, MASONIC HALL.

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1880.

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MECHANICS' & TRADERS' INSURANCE CO.

versus

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Writ of Error to the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR SAMUEL BOYD & CO., DEFENDANTS IN ERROR.

On 18th April, 1877, Basil G. Kiger, of Mississippi, brought suit, in a State Court of Louisiana, against Samuel Boyd & Co., owners of the Shippers' Cotton Press, in New Orleans, for the recovery of 196 bales of cotton belonging to said Kiger, which had been stored in that cotten press by Aiken & Watt, the factors of

Kiger, in New Orleans, in their firm name. He alleged that he had consigned said cotton to Aiken & Watt, not for sale, but to be stored and held protected by insurance for further orders; and he obtained a writ of sequestration, by virtue of which the sheriff seized and took into his possession the said cotton, and in due course released the same, on bond to Kiger.

See Record, pages 1 to 6.

On 23d April, 1877, with leave of the Court, Kiger filed a supplemental petition, in which he averred that the Mechanics' & Traders' Insurance Company claimed the cotton in question as pledgees, by virtue of two warehouse or cotton-press receipts issued by Samuel Boyd & Co. to Aiken & Watt, upon which the latter had obtained advances from the Insurance Company; that such claim was null and void, and said cotton-press receipts gave Aiken & Watt no authority to pledge or dispose of the property belonging to Kiger, he being in no manner indebted to said Aiken & Watt, who never were authorized to pledge said cotton or dispose of the same; whereupon, Kiger makes the Insurance Company a party defendant to his suit, prays for process and for judgment declaring the alleged pledge null and void, for cancellation of the receipts, and that he be decreed the owner of the cotton—pp. 6, 7.

On 26th April, 1877, Boyd & Co. filed their answer to Kiger's petition, allege that they have no interest in the sequestered cotton, other than having given two cotton-press receipts for the same, which were held by

the Insurance Company, which Boyd & Co. require to be delivered to them before they be deprived of the possession of the cotton, and they proceed to call the Insurance Company in warranty to defend the suit; and in case judgment is rendered against Boyd & Co., then they pray for judgment in their favor against the Insurance Company—p. 8.

On 9th May, 1877, the Mechanics' & Traders' Insurance Company appeared, and procured the removal of the case to the Federal Court, alleging Kiger to be a citizen of Mississippi, and Boyd & Co. and themselves citizens of Louisiana—pp. 9 to 11.

On 7th June, 1877, the Insurance Company filed an exception to the call in warranty of Boyd & Co., on the ground "that the same does not authorize the said Boyd & Co. to call or cite the said Insurance Company in warranty in this suit"—p. 11.

On same day, the Insurance Company filed its answer to the original and supplemental petitions of Kiger, and, after pleading the general issue, alleged, on 26th March, 1877, that Aiken & Watt, being in possession of the cotton, and holding Boyd & Co.'s cotton-press receipts for the same in their own name, pledged said receipts to said Insurance Company to secure a loan made to them of $4500; and on 3d April, 1877, this loan was increased by a further loan of $2500 upon the security of the same cotton, represented by the same receipts; that the notes given for said loan have been protested for non-payment, and still remain

due and unpaid; and that said loans were made in good faith, and that, at the time they were made, the Insurance Company had no knowledge of Kiger's claim.—pp. 12–13.

On 15 January, 1878, the exception filed by the Insurance Company to the call in warranty of Boyd & Co. was taken up, argued and overruled.—p. 13.

On 17th January, 1878, the Insurance Company filed an answer to the call in warranty, and a demand in reconvention against Boyd & Co., in which they set up the same facts as alleged in their answer to Kiger's petitions, and further aver that Boyd & Co. are liable to them for the 196 bales of cotton, and prayed for judgment in their favor against Boyd & Co. for the cotton, or the amount of their claim against Aiken & Watt.—pp. 14–15.

On same day the reconventional demand against Boyd & Co. was put at issue by an answer pleading a general denial—p. 16, and on same day the case was tried, and a verdict and judgment rendered in favor of Kiger, finding him to be the owner of the cotton; in favor of Boyd & Co. on their call in warranty, and in favor of Boyd & Co. on the reconventional demand of the Insurance Company, which latter was condemned to pay costs.—pp. 16–17.

To which judgment the Insurance Company sued out this writ of error.—pp. 22 *et seq.*

I.

We have not yet seen the brief of counsel for plain-

tiff in error, but the first assignment in error will probably be that the lower Court erred in overruling the exception filed by the Insurance Company to the call in warranty of Boyd & Co.

The ground of the exception relied upon below, was simply that the Circuit Court could not have any jurisdiction over the controversy between Boyd & Co. and the Insurance Company, because they were both citizens of the same State. The call in warranty is but an incident of the case, and the whole case was removed on the petition of the Insurance Company, and it must come up altogether, and could not be divided, part being left to be determined by the State Court, and part by the Federal Court.

Act of March 3d, 1875, section 2.

Girardy vs. Moore, 3 Woods, 397.

II.

The first and second bills of exception are taken to the refusal of the Court to charge the jury that, under the facts proved, Aiken & Watt were to be deemed and held to have been the owners of the cotton, so far as to make their transfers of the press receipts of Boyd & Co. valid and superior to the claim of the plaintiff, Kiger, and were enti led to be paid out of the cotton the amount of their claim against Aiken & Watt.

These rulings were clearly correct; Aiken & Watt never having had any title to the cotton itself, could not have any to the receipts representing the cotton; and they could transfer to the plaintiff in error no title

to that which they did not own. Where, by the laws of a State, "warehouse receipts are made negotiable, the holder of such a receipt takes no better title than if the goods themselves had been delivered to him."

First National Bank vs. Bryce, 19 Am. Law Register, p. 503.

III.

The third and fourth bills of exception are to rulings of the Court refusing to charge the jury that, under the facts proved, Boyd & Co. were bound to deliver to the Insurance Company the cotton mentioned in the receipts, or respond to the Insurance Company, under the reconventional demand, for the value thereof; and to find a verdict accordingly: and the fifth bill of exception is to the charge of the Court to the jury, that if the plaintiff was entitled to recover, then, the cotton having been taken possession of by the sheriff, on a writ of sequestration issued in favor of Kiger, then they should find in favor of Boyd & Co. on the reconventional demand of the Insurance Company.

The reconventional demand of the Insurance Company is based upon a demand made by them upon Boyd & Co. for the cotton called for by their receipts; this demand was made on 6th June, 1877 (p. 20), when the officers of the Insurance Company well knew that the cotton had been forcibly taken from the possession of Boyd & Co. by the sheriff, more than forty days previously (p. 4), and by the sheriff delivered on bond to Kiger (p. 5), by agreement made between the Insu-

rance Company and Kiger (p. 21). How can the Insurance Company reasonably urge a claim upon cotton that they agreed might leave the possession of the sheriff, who took it from Boyd & Co., and by their consent might go into the possession of Kiger, who claimed to own it?

In this case, as betweeu Kiger and the plaintiff in error, and as concerns the title to the cotton in question Boyd & Co. have no interest—they were merely warehousemen, and faithfully performed all their duties by carefully keeping the cotton until it was taken from them by the superior power of judicial authority, which they could not resist; and by immediately, notifying the holders of their receipts for the cotton, of the fact of their dispossession.

Edson vs. Weston, 7 Cowen, 278.
Stamford S. B. Co. vs. Gibbons, 9 Wendell, 327.
Cook vs. Holt, 48 New Xork, 275.
Wilder vs. Adams, 2 Woodbury & M. 334.
Rosenfield vs. Express Company, 1 Woods, 135.

We ask that the judgment of the Circuit Court be affirmed.

Respectfully submitted,

JOSEPH P. HORNOR,

W. S. BENEDICT,

Of Counsel for Boyd & Co., Defendants in Error.

New Orleans, 4 January, 1881.

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THE MECHANICS' AND TRADERS' INSURANCE COMPANY

versus

BASIL G. KIGER ET AL.

BRIEF FOR BASIL G. KIGER, ONE OF THE APPELLEES.

Respectfully submitted,

THOS. J. SEMMES,

For Defendant in Error, Basil G. Kiger.

A W Hyatt, Print, 73 Camp St, N O—18,086.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1880.

No. 215.

THE MECHANICS' AND TRADERS' INSURANCE COMPANY

versus

BASIL G. KIGER ET AL.

BRIEF FOR BASIL G. KIGER, ONE OF THE APPELLEES.

The only question involved in this case, so far as Basil G. Kiger, one of the appellees, is concerned, is the power of a factor to pledge for his own debts the property of his principal.

The bills of exception show that Kiger, a planter in Mississippi, shipped his crop of one hundred and ninety-six bales of cotton to Aiken & Watt, his commission merchants, in New Orleans, with instructions "not to sell at any price without advice from me."—p. 18.

Kiger was at no time a debtor to his commission merchants, but on the contrary, at the time of the pledges in question, and at the time the cotton was received and stored by Aiken & Watt, they were largely indebted to Kiger—p. 19.

When the cotton arrived at the port of New Orleans, Aiken & Watt, the consignees, received and stored it at the cotton press of Sam'l Boyd & Co., who issued receipts for the same in the form set forth in the transcript; one receipt is dated 26th March, 1877, for one hundred bales of cotton, p. 18; the other is dated April 3, 1877, for ninety-six bales of cotton—p. 19.

Subsequently, Aiken & Watt, the factors of Kiger, who at no time was indebted to them, borrowed $7000 from the appel-

lant, the Mechanics' and Traders' Insurance Company, and as security for the payment of the loan, Aiken & Watt transferred the warehouse receipts to the Insurance Company.

The warehouse receipts are copied in the transcript at pages 18 and 19; they purport to be receipts issued by the warehousemen, Sam'l Boyd & Co., in which they acknowledge to have received from Aiken & Watt the cotton in question, deliverable to the Mechanics' and Traders' Insurance Company or order. A printed endorsement, in red ink, in the body of the receipts, reads as follows: "The within cotton will not be delivered "except upon the return of this receipt to the Press properly "endorsed."

It is to be observed that in the answer filed by the Mechanics' and Traders' Insurance Company, no other title to the cotton was averred by it than that of innocent pledgees—p. 12.

It is well settled in Louisiana, as elsewhere, that a factor entrusted with property for sale has no authority to pledge for his own debts the property of his principal.

Stetson vs. Gurney, 17 La. 166.
Hadwin vs. Fisk, 1 La. An. 74.
Miller vs. Schneider, 19 La. An. 300.
Young vs. Cavaroc, 25 La. An. 313.

In the year 1868 (Act No. 150, p. 193) an act was passed which provided, in section six, that cotton press receipts might be transferred by endorsement, "and any person to whom the "same may be transferred shall be deemed and taken to be the "owner of the goods, etc., therein specified, so far as to give "validity to any pledge, lien or transfer made or created by "such person or persons, but no property shall be delivered "except on surrender and cancellation of said original receipt," etc., but cotton press receipts, "which shall have the words 'not "negotiable,' plainly written or stamped on the face thereof, "shall be exempt from the provisions of this act."

The provisions of this act were incorporated in the Revised Statutes of 1870 as sections 2477–2487.

While the act of 1868 was in force, the Supreme Court of Louisiana interpreted it, and held it did not confer on a factor the power to pledge for his own debts the property of his principal. It declared "there was nothing in the Statute showing any "intention to enlarge the powers of factors or to give them the "right to pledge the property confided to them for sale."

Young vs. Scott, 25 A. 313. This decision was rendered in the year 1873.

The Legislature, in 1876, reconsidered the whole subject, and repealed all laws in conflict with the new act. It is Act No. 72, approved 11th March, 1876—p. 113.

Section 1 provides that no custodian of produce shall issue a receipt unless in actual possession of the property.

Section 2 is as follows: "That any person, firm or associa- "tion who shall or may be, or in any way become the custodians "of any property, goods, products or merchandise whatever, and "who may issue receipts therefor, shall not, under any circum- "stances, or upon any order or guarantee whatever, deliver "property for which such receipts have been issued, until the "party or parties to whom such receipts have been issued, or "the legal holders thereof, shall have surrendered the same to "said custodians for cancellation, and in default of a strict com- "pliance with the provisions of this section of this Act, they "may be held liable by the legal holder or owner of their "receipt, for the market value of the property therein described, "as may be established by the Chamber of Commerce of the "City of New Orleans, or any committee thereof, approved and "authenticated by the President or Vice President of said "Chamber of Commerce. *All warehouse receipts, intended for "pledge, under the provisions of this Act, shall be paraphed, before "being issued, as follows: For hypothecation in accordance with the "provisions of this Act.*

"SEC. 4. *Be it further enacted, etc.*, That parties who may "borrow money on the faith of warehouse receipts, representing

" property in store, *shall file their affidavit with the pledgees that* " *such property is theirs, the pledgers', personal property, or that it is* " *the property of some party for whom the pledger is acting, as agent,* " *factor, commission merchant, or in any other fiduciary capacity, and* " *that said party is justly and truly indebted to the pledger in an amount* " *equal in value to the value of the property pledged,* as specified in " the warehouse receipts, for moneys paid to him, or paid by his " order, and for his account, by the party or consignee making " the pledge. The cashier of a bank, or the secretary of any " insurance company, incorporated or working under any law in " the United States, or of this State, is hereby authorized to " administer the oath contemplated under the provisions of this " Act. Any deviation therefrom shall render the party or par- " ties so deviating, liable for the value of the property, or any " excess in value, over and above the amount for which it may " have been pledged, in any manner specified in section one of " this Act, and to prosecution for perjury, and also to obtaining " money under false pretenses.

" SEC. 5. That the vendor's lien of five days' privilege, now " allowed in commercial transactions, for the payment of the " purchase price, shall not be affected by the provisions of this " Act, except in case in which a warehouse receipt has been " pledged as collateral for money borrowed. The holder of the " warehouse receipt shall be considered and held as the actual " owner of the property described in the receipt, and no clause " in this Act shall operate to the detriment or injury of " the holder of a warehouse receipt, to the extent of the " value of the property specified, made and issued in accord- " ance with, and under the provisions of this Act; provided, " that where the agent, factor or pledger may have wrongfully " pledged, in violation of this Act, any property, the lien of the " owner shall be valid, even against the third holder of the ware- " house receipt."

The receipts in this case were not marked or paraphed " For hypothecation, in accordance with the provisions of this Act "

of 1876; nor did Aiken & Watt make the affidavit required by the fourth section of the act; and the proviso of the fifth section, in such a case as this, expressly declares, "that where the factor, "agent or pledger may have wrongfully pledged, in violation of "this Act, any property, the *lien of the owner shall be valid even* "*against the third holder* of the warehouse receipt,"

The Act points out to the pledgee the means of protecting himself. Those means are:

1. Requiring of the pledger a warehouse receipt paraphed or endorsed with the words, "For hypothecation in accordance with the Act of 1876."

2. Requiring of him an affidavit that the property specified in the receipt is either his own, or that he holds as agent, and that the owner is indebted to him in an amount equal to the value of the property.

3. If the pledger makes a false oath, he shall be prosecuted for perjury and for obtaining money under false pretences. But this penalty is imposed in the interest of the pledgee, for section five expressly provides that a wrongful pledge shall not affect "the lien of the owner," for such lien "shall be valid even "against the third holder of the warehouse receipt."

The word "lien" there is evidently a misprint for "*title*." If not a misprint, it is merely an inaccurate use of language. The intent is too manifest to require discussion.

Respectfully submitted,

THOS. J. SEMMES,

For Defendant in Error, Basil G. Kiger.

358

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~483.~~ 206

THE UNITED STATES, EX. REL. REBECCA W. WOLFF, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED SEPTEMBER 19, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 483.

THE UNITED STATES, EX. REL. REBECCA W. WOLFF, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition for mandamus	1	1
Order for mandamus	9	3
Answer	9.	3
Order leave to amend	13	5
Amended answer	13	5
Traverse to answer	15	6
Submission of cause	21	7
Rule	21	8
Order cause reinstated	22	8
Motion and order to discontinue portion of relator's demand	22	8
Order to withdraw traverse	24	9
Demurrer	24	9
Submission of demurrer	29	10
Judgment	30	11
Petition for writ of error	31	11
Order for writ of error	34	12
Bond for writ of error	35	12
Clerk's certificate	38	13
Writ of error	39	13
Citation	40	14

1 *Petition for mandamus.—Filed March 24th, 1877.*

UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit, and district of Louisiana.

UNITED STATES, EX REL. REBECCA W. WOLFF,
versus
CITY OF NEW ORLEANS ET AL. } No. 8145.

The honorable the judges of the United States circuit court, fifth circuit, district of Louisiana:

The petition of the United States of America, upon the relation of Rebecca W. Wolff, a citizen of the United States and of the State of New York, temporarily residing in the city of New Orleans, in the State of Louisiana, respectfully represents—

That on or about the 30th day of March, 1876, the relator aforesaid, in and before this honorable court, obtained an absolute and final judgment against the city of New Orleans, a municipal corporation, organized by the laws of the State of Louisiana, and located in the parish of Orleans, in the said State, for the sum of thirteen thousand dol-
2 lars, with six per cent. interest from the first day of May, A. D. 1874, until paid, upon the sum of nine thousand dollars, and interest at the like rate upon the sum of four thousand dollars, from the first day of January, A. D. 1875, until paid, with costs and expenses of suit.

Further your petitioner shows unto your honors that relator has issued a writ of fieri facias upon the aforesaid judgment, and having placed the same in the hands of the United States marshal of the State of Louisiana for execution, that officer has returned the said writ into court nulla bona; that relator has caused her aforesaid judgment to be filed in the office of the administrator of accounts of the said city, and to be there registered of the date on which the same was presented, in strict conformity to an act of the general assembly of the State of Louisiana, known as act No. 5, of the extra session of the year 1870, and to which act, for greater certainty, reference is prayed; that relator has specifically called upon the mayor and the several administrators of the city of New Orleans to pay the aforesaid judgment out of the contingent fund of the said corporation; that if the said judgment
3 cannot be paid in that way and manner, then and in that event they have been requested to levy a special tax upon all the real or personal property lying or being within the corporate limits of the city of New Orleans, liable to taxation, to an amount sufficient to pay such judgment; should such special tax not be required, nor authorized by law, the said mayor and administrators have been asked to budget the aforesaid judgment, and to provide for its payment, through and by means of a tax, levied or to be levied under and in pursuance of such budget; and finally, relator has done and performed everything within her power to do and perform to enforce a collection and payment of the judgment against the city of New Orleans held and owned by her as aforesaid.

Further your petitioner shows unto your honors, that, notwithstanding the action and demand of relator had and made as aforesaid, the city of New Orleans and the mayor and several administrators thereof have neglected and refused and still neglect and refuse to comply with

relator's demand, and will take no steps whatever towards the payment in whole or in part of the judgment held and owned by her.

4 Further shows that said relator is entirely powerless to enforce the collection of her aforesaid judgment, in whole or in part, except through the instrumentality of this honorable court, to be accorded by and through the writ of mandamus hereinafter prayed for.

The premises considered, your petitioner prays that a writ of alternative mandamus may be directed to issue, addressed to the city of New Orleans, and to the mayor and the several administrators of the city of New Orleans, *and to the mayor and the several administrators of the city of New Orleans*, to wit: Edward Pillsbury, mayor; J. G. Brown, administrator of public accounts; Charles Cavanac, administrator of commerce; Jules E. Denis, administrator of finance; R. E. Diamond, administrator of police; James D. Edwards, administrator of water-works and public buildings; John McCaffrey, administrator of improvement; and J. E. Rengstorff, administrator of assessments; that in and by the said writ, the said city, and the said mayor and several administrators aforesaid, may jointly and severally be directed and required promptly to pay the judgment held and owned by relator as aforesaid, out of the contingent fund or fund

5 for current expenses; that if, for want of monies to the credit of such fund, the said judgment is not, or cannot be, paid in that way, and to assemble in council and pass an ordinance or resolution levying a special tax upon all the real and personal property lying or being within the corporate limits of the city of New Orleans liable to taxation, for the purpose of paying relator's judgment aforesaid, principal, interest, and costs; providing in such ordinance for collection of such tax in a prompt and expeditious manner, and therein fully securing the immediate application of such special tax to the object and purpose for which such tax may have been levied and collected; that in and by the aforesaid writ of alternative mandamus the city of New Orleans and the mayor and several administrators thereof may be directed and required, when assembled in council as aforesaid, in addition to the ordinance or resolution levying a special tax and providing for its collection and payment as aforesaid by another ordinance or resolu-

6 tion to be passed or adopted for that purpose, to amend the municipal budget at that time existing, and thereafter to frame and adopt each and every estimate of receipts and expenditures which from and after that time shall be made by the city, and the said mayor, and administrators in council assembled or otherwise, so as to include and place upon such amended and further and other budget or estimate of receipts and expenditures the judgment held and owned by relator as aforesaid, or the unpaid portion of such judgment, in order that the said judgment, or the amount remaining unpaid or due thereupon, may stand and be regarded as a judgment liability and expenditure of the said city of New Orleans until the amount of such judgment, or the sum remaining unpaid thereon, shall have become fully paid and extinguished; then and there to levy and impose a budget tax under and by virtue of the estimate of receipts and expenditures hereinb'ore referred to upon all the real and personal property hereinbefore designated, and upon any and all property contemplated by such budget or estimate, to be levied

7 and assessed in a way and manner and to an amount sufficient to pay off and discharge whatever sum may then be due and owing upon relator's aforesaid judgment; at the time of adopting such budget and levying and imposing a budget tax, as hereinbefore demanded, to provide for the collection of, and to collect, such budget tax without

unreasonable delay; and with the monies or tax thus collected to pay and satisfy as promptly as the nature of the case will admit of, and without laches or negligence, the entire amount which at the time may remain due and owing to relator under her aforesaid judgment against the city of New Orleans.

Your petitioner further prays, upon hearing the parties, should such hearing become necessary, that a peremptory writ of mandamus may be directed to issue requiring and commanding the city of New Orleans, and the mayor and several administrators of said city, separately and collectively, and without further delay, to do and perform each and every one and all the acts and things required of them in the
8 aforesaid alternative writ, and that such alternative writ may be made absolute, final, and peremptory; that the said defendants may be condemned jointly and severally to pay all the costs of this proceeding; and that petitioner and relator may have such other and further order and decree as may be suited to law and the nature of the case.

And petitioner, as in duty bound, will ever pray, etc.

(Signed) LACEY AND BUTLER &
WM. H. HUNT,
Attorneys.

STATE OF LOUISIANA,
City of New Orleans:

Rebecca W. Wolff, the relator in the foregoing petition named, being duly sworn, doth depose and say that all the facts and allegations set forth and contained in the foregoing petition are true, to the best of deponent's knowledge, information, and belief.

And further this deponent says not.

(Signed) REBECCA W. WOLFF.

Sworn to and subscribed before me this 2d day of March, A. D. 1877.

(Signed) CHAS. S. RICE,
9 *U. S. Comm'r, Dist. of La.*

Order.

Let an alternative writ of mandamus issue as within prayed for, returnable before this court, on Saturday, the 31st of March, A. D. 1877.

(Signed) W. B. WOODS,
Judge.

Dated New Orleans, March 22d, 1877.

Answer.—Filed April 7th, 187 .

U. S. circuit court, district of Louisiana.

UNITED STATES, EX REL. REBECCA W. WOLFF,
vs.
CITY OF NEW ORLEANS ET AL. } No. 8145.

Now comes the City of New Orleans and Edward Pillsbury, mayor; J. G. Brown, adm'r of public accounts; Charles Cavanac, adm'r of commerce; Jules Denis, adm'r of finance; R. E. Diamond, adm'r of police; James D. Edwards, adm'r of water works; John McCaffrey, adm'r of improvements, and J. E. Rengstorff, adm'r of assessments, and, for answer to the petition of relator, they shew:

That they admit the relator has recovered judgment against the
10 City of New Orleans; that an execution has issued and been returned no property found, as more fully appears by reference to the judgment, execution, and return in the suit of Mrs. Rebecca Wolff vs. the City of New Orleans, No. 7648 of the docket of this court, which are specially referred to for fuller explanation and greater certainty.

And, further answering, these respondents say that said judgment was recovered upon certain bonds, and for the principal thereof, made by the City of New Orleans for one thousand dollars each, issued by the City of New Orleans to the New Orleans, Jackson and Great Northern Railroad Co., under the authority of the act of the legislature of Louisiana No. 109, approved March 15th, 1854, as appears by said record.

And, further answering, these respondents say that no tax whatever for the payment of the principal of said bonds is directed to be levied or collected by said act, or by any other act of the legislature or provision of law, and these respondents refer to said act, and especi-
11 ally to the 2d section thereof, to shew the absence of such provision, and that in fact other provision is made therein for the payment of said bonds.

Forasmuch, therefore, as the laws of Louisiana have directed no tax to be levied or collected to pay the principal of said bonds—

Forasmuch, therefore, as the laws of Louisiana have directed no tax to be levied or collected to pay the principal of said bonds, these respondents are wholly without authority to levy and collect such tax, and have no duty to perform in the premises.

Respondents further say that there is no contingent fund out of which said judgment can be paid, and no monies to the credit of fund for current city expenses not otherwise appropriated and budgeted for, and that for the reasons aforesaid they have not budgeted and levied a tax for the payment of the aforesaid judgment, and cannot levy a special tax for the said purpose, as asked for in the prayer of relator's petition, and they humbly submit that this honorable court cannot grant
12 the mandamus asked for by relator.

Wherefore these respondents pray for judgment in their favor, that the petition of the relator be dismissed with costs, and for general relief.

(Signed) B. F. JONAS,
City Att'y.

Personally appeared Edward Pilsbury, mayor of the city of New Orleans; J. C. Denis, adm'r of finance, and J. G. Brown, adm'r of public accounts for said city, who, being duly sworn, depose and say that all the facts and allegations in the foregoing answer are true and correct.

(Signed) E. PILSBURY,
Mayor.

(Signed) J. G. BROWN,
Adm'r Pub. Ac's.

(Signed) J. C. DENIS,
Adm'r F'ce.

Sworn to and subscribed before me this 4th day of April, 1877.

(Signed) J. PARIS CHILDRESS,
First Justice of the Peace, Parish of Orleans.

13 *Order. Leave to amend answer.—Extract from minutes, April term, 1877.*

NEW ORLEANS, *Friday, April 27th*, 1877.

Court met pursuant to adjournment. Present, Hon. Edward C. Billings, district judge.

REBECCA W. WOLFF
vs.
CITY OF NEW ORLEANS. } No. 8145.

The application for a writ of mandamus in this cause came on to be heard upon the pleadings and proofs, and having been argued by Lacey & Butler and Jules Aroni for relator, and Finney & Miller and B. F. Jonas for the defendant, the matter was continued to be reassigned hereafter, and leave was granted to amend the answer.

Amended answer.—Filed May 7th, 1877.

U. S. circuit court.

UNITED STATES, EX REL. MRS. REBECCA W. WOLFF,
vs.
THE CITY OF NEW ORLEANS. } No. 8145.

Now comes the city of New Orleans and the mayor and administrators thereof, and for further and supplemental answer to the
14 petition and demand of relator, they say:

That at the time the bonds (upon which relator's judgment was rendered) were issued by the city of New Orleans, a general statute of the State of Louisiana prohibited municipal corporations from incurring any debt or liability unless in the ordinance creating the same full provision was made for the payment of principal and interest; at the same time a special statute prescribed the form of the ordinance by which a particular debt might be created, and declared that such ordinance must be submitted to the legal voters of the corporation, and the assent of a majority of such voters was made a condition of its validity. Therefore where such ordinance so submitted to the voters for their approval (as was the case with the ordinance under which said bonds were issued) contained no provision for the levying of any tax to pay the principal of the debt, but did contain another provision, which was evidently deemed ample for such purpose it was the evident intention of
15 the legislature that the principal debt should not be paid by taxation; and the consent of the voters which gave the ordinance validity was only given on the conditions therein prescribed, which was a fact well known to the holders of the bonds, and imposed a restraint on any future legislation in relation to the payment of the principal of said bonds.

Wherefore respondents pray to be hence dismissed with costs.

(Signed) E. PILSBURY, *Mayor.*
(do) J. G. BROWN,
Adm'r Public Acs.
(do) J. E. DENIS,
Adm'r Finance.

Traverse to return or replication to answer.—Filed May 29, 1877.

United States circuit court, district of Louisiana.

UNITED STATES, EX REL. REBECCA W. WOLFF,
vs.
CITY OF NEW ORLEANS ET AL. } No. 8145.

And now before the court comes the United States, ex relation Rebecca W. Wolf, and also comes the said relator, for and in her
16 own behalf, and traversing the return and supplemental return made to the alternative writ of mandamus herein issued, or the original and supplemental answers herein filed, she shows unto the court—

That there is a current city expense fund under the control of the mayor and board of administrators of the city of New Orleans in council assembled, out of and by means of which the judgment of relator can be settled in full; that relator is justly and legally entitled to be paid her said judgment through such fund in preference to any and all other debts, liabilities, expenditures, and appropriations; and if the appropriations referred to and set up in the original return or answer of respondents have in fact been made, it is the duty of the said respondents in that event to assemble in council, without unnecessary delay, and so to alter and amend such appropriations as to cause relator to be paid out of the current city expense fund in preference to any other person or persons, or party or parties, whomsoever.

For further replication to the return or answer made by the
17 said respondents, these appearers say, that the bonds underlying the judgment held by relator were issued by the said city, under and in pursuance to the provisions of act 109 of the general assembly of the State of Louisiana, entitled "An act for the subscription, by the city of New Orleans, to the N. O., Jackson and G. N. R. Road Company," approved March 15, 1854.

Further these appearers say that neither said act nor any statute or law of the State of Louisiana has expressly or implicitly prohibited or restrained the levy of a tax upon any taxable property lying within the corporate limits of New Orleans, for the purpose of paying the principal of the aforesaid bonds, and in the absence of such legislative restriction, that the power to contract the debt evidenced by the bonds carried with it the power to provide for their payment, principal and interest, by the imposition and collection of a tax.

Furthermore these appearers say that if by any law of the State a restraint has been laid upon taxation for the purpose of paying the municipal bonds, issued under and in accordance with the aforesaid act 109, in and by another statute of the State known and designated
18 as act No. 5, duly enacted and passed in that year, such restriction was so far modified and removed as to authorize the levy of a budget tax for the purpose of paying any final judgment upon the bonds aforesaid, rendered against the city of New Orleans, and registered in the office of the administrator of public accounts in conformity to requirements of said act No. 5.

And these appearers, further traversing the return and amended return of respondents or the answer and supplemental answer by them filed, say:

That if it be true that the acts of the legislature and the ordinance passed by the city of New Orleans, referred to in respondent's supple-

mental return or answer, did contain any stipulation or agreement between the bondholder and the payer, such stipulation, agreement, or contract had no other or further bearing or meaning than this: The former agreed to advance his money upon the bonds, in order that the company might be in funds to commence, construct, complete, and run a railroad pregnant with the interest of every tax-payer having property
19 within the corporate limits of New Orleans, and on account thereof the tax-payer consented and agreed that the interest upon those bonds should be met by an annual tax; that payment of the principal should be secured by a pledge of the stock and its dividends; that the bondholder should have the right of commuting bonds into stock, and in addition thereto, that the city of New Orleans should be held and bound to pay the principal and interest of the bonds, be liable to be sued upon such bonds to judgment, and as a judgment debtor be forced to a payment of that judgment by means of all such agencies or instrumentalities as the law might accord to other judgment creditors, for the collection of their judgments against the corporation—not a dead decree, insusceptible of movement and execution, but a living judgment, to be rendered exigible by means of such processes and remedies as the law might from time to time prescribe for the collection of all other judgments rendered against the city of New Orleans.

Wherefore these appearers pray that respondents may take noth-
20 ing by their return and amended return to the alternative writ of mandamus, herein issued; that such return and amended return be disregarded, and held for naught; that a peremptory writ of mandamus issue as prayed for; that relator recover costs, and have such other and further order as may be suited to law and the nature of the case.

(Signed) LACEY & BUTLER,
Attorneys.

STATE OF LOUISIANA,
City of New Orleans, ss:

Personally came and appeared before me, the undersigned authority, Rebecca W. Wolff, the relator in the foregoing traverse or replication named, who being by me duly sworn, doth depose and say that she has read the foregoing traverse, or replication, and that all the facts, allegations, and averments therein contained and set forth are true, to the best of her knowledge, information, and belief.

(Signed) REBECCA W. WOLFF.

Sworn to and subscribed before me this 29th day of May, A. D. 1877.

(Signed) F. B. VINOT,
U. S. Comm'r.

21 *Submission of cause.—Extract from minutes of June 13th, 1877.*

U. S., EX REL. REBECCA W. WOLFF,
vs.
CITY OF NEW ORLEANS. } No. 8145.

This cause came on to be heard on the application for a writ of mandamus, and, having been argued by counsel, the court took time to consider.

Rule.—Extract from minutes November term, 1877.

NEW ORLEANS, *Wednesday, April 10th*, 1878.

Court met pursuant to adjournment. Present, Hon. Edward C. Billings, district judge.

UNITED STATES, EX REL. REBECCA W. WOLFF,
vs.
CITY OF NEW ORLEANS. } No. 8145.

On motion of Lacey & Butler, of counsel for relator, and upon suggesting to the court that this proceeding involves issues of fact as well as of law, and that such issues of fact ought to be submitted to a jury,
it is ordered that the defendants show cause on Saturday, the
22 13th day of April, 1878, at 11 a. m., why this cause should not be reinstated upon the docket of this court, to be proceeded with in accordance with law.

Order: Cause reinstated.—Extract from minutes of April 13th, 1878.

UNITED STATES, EX REL. REBECCA W. WOLFF,
vs.
CITY OF NEW ORLEANS. } No. 8.

The rule taken by relator on 10th instant came on for trial—
Lacey & Butler for mover;
B. F. Jonas, city attorney, for def't—
When, by consent of counsel, it was ordered that the cause be reinstated upon the docket of this court, to be proceeded with in accordance with law.

Motion and order to discontinue portion of relator's demand.—Extract from minutes of April 15th, 1878.

UNITED STATES, EX REL. REBECCA W. WOLFF,
vs.
CITY OF NEW ORLEANS. } No. 8145.

On motion of Lacey & Butler, of counsel for relator, and upon
23 suggesting and showing to the court that relator has reason to believe that she will be unable to show that there are any monies to the credit of the contingent fund, or fund for current city expenses, out of which relator's judgment and claim may be paid in whole or in part; and upon further suggesting and showing to the court that it is the desire of relator to discontinue these proceedings, so far as they seek to affect the aforesaid contingent fund, or fund for current city expenses, without prejudice to her right to maintain and perpetuate such proceedings in all other respects; it is ordered that these proceedings, so far as they may seek to obtain a writ of mandamus to compel the mayor and several administrators of the city of New Orleans promptly to pay the judgment owned and held by relator out of the contingent fund, or fund for current city expenses, be discontinued, as in case of non-suit, and, without prejudice to relator's right to continue and to enforce these proceedings so far as to compel the levy and collection of a special tax, the budgeting of relator's judgment, the
24 levy and collection of a budget tax, and to accord to relator all the relief and remedies demanded in her original petition, ex-

cept as against the contingent fund, or fund for current city expenses.

Motion and order to withdraw traverse.—Extract from minutes of April 22d, 1878.

U. S., EX REL. REBECCA W. WOLFF,
vs.
CITY OF NEW ORLEANS. } No. 8145.

On motion of Lacey & Butler, of counsel for relator, it is ordered that said relator have leave to withdraw the traverse heretofore filed, with the right to demur and otherwise appear and defend herself, in accordance with the law in such case made and provided.

Demurrer.—Filed April 22d, 1878.

U. S. circuit court.

UNITED STATES, EX REL. REBECCA W. WOLFF,
vs.
CITY OF NEW ORLEANS. } No. 8145.

The demurrer of Rebecca W. Wolff, relator, to the original and supplemental returns of respondents herein filed.

25 This appearer by protestation not confessing nor acknowledging all or any of the matters and things in the said returns contained to be true in manner and form as the same are therein set forth, doth demur thereto, and for cause of demurrer this appearer shows.

That inasmuch as the said respondents in and by their returns present matters and things which they are precluded from enquiring into, by and through the final judgment referred to in the petition for a mandamus, they have not, in and by their returns, stated such a case as doth or ought to entitle them to any relief. And this relator prays may be specifically and primarily enquired into and determined by the court, and judgment accordingly be had.

And for other causes of demurrer, should the demurrer hereinabove first assigned not be held to be sufficient, then this appearer further shows:

1st. The returns traverse no fact set forth in relator's petition for a mandamus; but they allege in justification of respondents' refusal to comply with the writ, the absence of any law or statute of the
26 State of Louisiana, directing the levy of a tax for the payment of the principal of the bonds underlying relator's judgment, the existence in the act of the legislature under which those bonds were issued of a statutory provision other than for taxation through and by means of which such payment was to be effected, and finally an understanding or agreement established by certain laws or statutes of the State of Louisiana, precluding the levy of a tax for the purpose of extinguishing the principal of the bonds aforesaid, all of which, if true, form the subject matter of a demurrer, and are not rightfully embraced in return or answer. The returns of respondents therefore, in form at least, are objectionable and defective, and for want of proper form they cannot be recognized by the court as good and sufficient grounds for respondents' refusal to obey the writ.

2d. The mere want of a statutory provision directing the levy of a tax to pay the principal of the bonds underlying relator's judgment, the special provisions contained in the act of the general assembly of the
27 State of Louisiana, under and by virtue of which the bonds were issued, in reference to the payment of the principal and interest of those bonds, and the pretended statutory understanding or agreement, more particularly referred in the supplemental answer or return present neither a good and sufficient nor a legal and valid excuse for not complying with relator's demand for the levy of a tax, under act No. 5, of the extra session of the legislature of the State of Louisiana, for the year 1870. The returns of respondents to the writ of mandamus, are therefore and to that extent insufficient and defective in substance, and ought not to be recognized by the court nor allowed to defeat the demands for relief presented in relator's petition.

3rd. The city of New Orleans is simply a creation of the legislature and without the right to oppose the levy of a tax specially enjoined by a State statute; resistance to the tax demanded by relator, if such resistance can, under any circumstances, be allowed, must come from the tax payers, not from the corporate authorities of New Orleans.

28 4th. The returns are too loose and indefinite, too vague and uncertain, to meet the requirements of law and the practice of the court.

Wherefore, and for divers other errors and imperfections, relator demands the judgment of this court, should the same become necessary, whether or not the said returns present valid and legal grounds to justify respondents in refusing to comply with the writ of mandamus herein issued; and prays the court that this special demurrer filed by relator against such returns, may then be sustained; and that relator have judgment as is prayed for in her petition, and recover costs, together with general relief in the premises.

And should the demurrer herein taken of itself be insufficient to defeat the aforesaid returns, and a traverse be necessary to protect relator's rights and interest in the premises, then and in that event, but not otherwise, relator, Rebecca W. Wolff, in traversing the said returns to the extent hereinafter set forth, particularly denies that there is any act or statute of the general assembly of the State of Louisiana
29 or any ordinance, resolution, or other proceeding of the common council of the city of New Orleans, or of said city, which has the legal effect of precluding respondents from a levy of the tax demanded in relator's petition for a mandamus.

Wherefore she prays that she may have judgment in her favor and that a peremptory writ of mandamus may be directed to issue as is demanded in her petition herein filed, at the costs of respondents.

(Signed)

LACEY & BUTLER,
Of Counsel.

Submission of demurrer.—Extract from minutes of May 10th, 1878.

U. S., EX REL. REBECCA W. WOLFF, *vs.* CITY OF NEW ORLEANS. } No. 8145.

The demurrer was called, and thereupon counsel for relator submitted the same, without further argument, and the case was taken under advisement.

30 *Judgment.—Extract from judgment docket, April term, 1878.*

NEW ORLEANS,
Monday, June 10th, 1878.

Court met pursuant to adjournment. Present, Hon. Edward C. Billings, district judge.

UNITED STATES, EX REL. REBECCA W. WOLFF,
vs.
THE CITY OF NEW ORLEANS. } No. 8145.

This cause having been submitted on the pleadings and proofs herein filed, it is ordered, adjudged, and decreed that the defendants, the administrators, mayor, &c., of the common council of said city exercise the discretion vested in them according to sec. 3 of act No. 5 of the acts of the year 1870, to appropriate from the money set apart in the budget or annual estimate for contingent expenses, a sufficient sum of money to pay the judgment herein, but that if no appropriation be made by the common council of said city, the said judgment shall be paid according to its priority of filing and registering in the office of
31 the comptroller from the first money next annually set apart for that purpose. Provided that nothing herein contained shall require the said common council to assess or levy any tax upon said city for the payment of said judgment until the legislature of the State of Louisiana shall authorize the same.

Judgment rendered June 10th, 1878.
Judgment signed June 4th, 1878.
(Signed)

EDWARD C. BILLINGS,
Judge.

Petition and order for writ of error.—Filed June 15th, 1878.

U. S. cir. court, dist. of La.

UNITED STATES, EX REL. REBECCA W. WOLFF,
vs
CITY OF NEW ORLEANS ET AL. } No. 8145.

To the honorable the judges of the United States circuit court for the fifth circuit, district of Louisiana:

The petition of the United States of America, upon the relation of Rebecca W. Wolff, in her individual name and capacity, respectfully represents:

That in the above entitled and numbered suit a judgment was rendered by this honorable court upon the tenth day of June, in the
32 year of our Lord one thousand eight hundred and seventy-eight, and signed upon the day of the said month of June, in and by which judgment this honorable court has refused or neglected to compel the city of New Orleans and the mayor and administrators thereof to budget relator's judgment, and to set apart or provide any moneys for its payment, and moreover has relieved the common council of the said city of New Orleans from the liability to levy a tax for the payment of said judgment until the legislature of the State of Louisiana shall authorize the same.

That petitioner and relator is advised and believes that in and by said judgment plain and manifest error has been done to her; and that irreparable injury will thereby be worked to her, unless she be relieved by a writ of error to the Supreme Court of the United States.

That the amount involved is over fifteen thousand dollars.

Wherefore your petitioner prays that a writ of error may be
33 granted by your honors in this case, returnable, according to law, before the Supreme Court of the United States, at the city of Washington, upon your petitioner furnishing bond and security as the law requires, and in such an amount as may be fixed upon by your honors.

And your petitioners pray for such other and further order as may be suited to law and the nature of this case.

(Signed) LACEY & BUTLER,
Of Counsel.

34 *Order for writ of error.*

Let a writ of error be allowed in this case as within prayed for and according to law, returnable to the Supreme Court of the United States on the second Monday of October, eighteen hundred and seventy-eight, upon petitioner giving bond in the sum of five hundred dollars, with good and solvent security, conditioned as the law directs.

Dated New Orleans, June 15th, 1878.

(Signed) EDWARD C. BILLINGS,
Judge.

35 *Bond for writ of error.—Filed June 17th,* 1878.

Know all men by these presents that we, Rebecca W. Wolff as principal, and Thomas Simms as sure*ties*, are held and firmly bound unto the city of New Orleans, and to the mayor and the several administrators thereof, jointly and severally, in the full and just sum of five hundred dollars, to be paid to the said city of New Orleans, and to the mayor and several administrators of said city, jointly and severally, and their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed
36 with our seals and dated this 15th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas, lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court wherein the United States, upon the relation of Rebecca W. Wolff, were plaintiffs, and the city and the mayor and several administrators aforesaid are defendants, judgment was rendered against the said relator, and in favor of the said city and the mayor and administrators aforesaid, and the said relator having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said city of New Orleans and to the mayor and several administrators aforesaid, citing and admonishing them and each of them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such, that if the
37 said relator, Rebecca W. Wolff, shall prosecute her writ to effect and answer all damages and costs if she fails to make her plea

good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) REBECCA W. WOLFF, [L. S.]
Per LACEY & BUTLER, *Attys.*
(Signed) THOMAS SIMMS. [L. S.]

Sealed and delivered in the presence of—
(Signed) F. B. VINOT.

Approved.
(Signed) EDWARD C. BILLINGS,
Judge.

DISTRICT OF LOUISIANA, *ss:*

Thomas Simms, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution.

(Signed) THOS. SIMMS.

Subscribed and sworn to before me this 17th day of June, 1878.
(Signed) F. B. VINOT,
U. S. Comm'r.

38 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 37 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of the United States of America, ex rel. Rebecca W. Wolff, versus The City of New Orleans, No. 8145 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 17th day of August, A. D. 1878.

[SEAL.] F. A. WOOLFLEY,
Clerk.

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 17th day of August, A. D. 1878.

EDWARD C. BILLINGS,
Judge.

39 UNITED STATES OF AMERICA, SS:

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of

the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States of America, on the relation of Rebecca W. Wolff, and the mayor and administrators of the city of New Orleans, a manifest error hath happened, to the great damage of the said Rebecca W. Wolff, as by her complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 15th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 8145. United States, on the relation of Rebecca W. Wolff, plaintiff in error, versus The Mayor & Administrators of the City of New Orleans, defendants in error. Writ of error. Filed June 15th, 1878. F. B. Vinot, d'y cl'k.

40 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the mayor and administrators of the city of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the United States of America, on the relation of Rebecca W. Wolff, is plaintiff in error, and you, and each of you, are defendants in error, to show cause, if any there be, why the judgment rendered against the said Rebecca W. Wolff, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 15th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

EDWARD C. BILLINGS,
Judge.

41 (Indorsed:) United States circuit court. No. 8145. The United States, on the relation of Rebecca W. Wolff, plaintiff in error, vs. The Mayor and Administrators of the City of New Orleans, defendants in error. Citation.

Marshal's return.

Service of the within citation upon the city of New Orleans, the

mayor, and the several administrators of said city, this 18th day of June, A. D. 1878, admitted.

H. C. MILLER,
Att'y for Def't.

(Indorsement on cover:) No. 483. The United States, ex rel. Rebecca W. Wolff, plaintiff in error, vs. The Mayor & Administrators of the City of New Orleans. Louisiana C. C. U. S. Filed 19th September, 1878.